

February 14, 2006

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Nancy Mae Gminski

Date of Filing: January 3, 2006

Case Number: TFA-0139

On January 3, 2006, Nancy Mae Gminski (the Appellant), filed an Appeal from a final determination that the Oak Ridge Office (Oak Ridge) of the Department of Energy (DOE) issued on December 1, 2005. That determination concerned a request for information submitted by the Appellant pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. If the present Appeal were granted, Oak Ridge would be required to conduct a further search for responsive documents.

Background

On July 10, 2004, the Appellant submitted a FOIA request. On August 8, 2005, the initial request was narrowed to all "records on [the Appellant's] father, Arthur Gminski, from 1940 to 1970 and his association with human radiation experiments, the nuclear airplane, Pratt and Whitney, H.E. Dickerman, Chapman Valve, the Atomic Energy Commission, any list of medals on which his name appears, and documents of a scientific and technical nature, including but not limited to any blueprints or drawings bearing his name or the company H.E. Dickerman." Determination Letter dated December 1, 2005, from Amy Rothrock, Oak Ridge, DOE, to the Appellant. On December 1, 2005, Oak Ridge responded that the search of the files and facilities of Oak Ridge yielded no records relating to Mr. Gminski. *Id.*

On January 3, 2006, the Appellant appealed that determination to our Office. Appeal Letter received January 3, 2006 from Nancy Mae Gminski to Director, Office of Hearings and Appeals (OHA), DOE. In the Appeal, the Appellant argues that the search was conducted using an incorrect spelling of Mr. Gminski's name. Further, the Appellant asks why the request took one year to be referred to Oak Ridge. Moreover, she states that she specifically asked not to be referred to the National Archives because she had already contacted it regarding different information. Finally, the Appellant claims that Department of Defense records must be searched. *Id.*

Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must "conduct a search reasonably calculated to uncover all relevant documents." *Truitt v.*

Department of State, 897 F.2d 540, 542 (D.C. Cir. 1990). "The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials." *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Glen Bowers*, 29 DOE ¶ ____ (Case No. TFA-0138) (January 9, 2006); *Doris M. Harthun*, 28 DOE ¶ 80,282 (2003).

We contacted Oak Ridge to determine what type of search was conducted. Oak Ridge indicated that the search was conducted using the correct spelling of Mr. Gminski's name¹ and/or his social security number. The Appellant provided a copy of Mr. Gminski's death certificate, which was then provided to the records custodians to perform the search. The searches were conducted both by hand and electronically in the DOE Archives where some personnel security clearance assurance index cards and film badge readings on former workers of some atomic weapons employers are stored. Oak Ridge indicated that it does not have any records on Chapman Valve employees. Oak Ridge also searched the Oak Ridge Associated Universities file for records on radiation accidents or incidents Mr. Gminski might have been involved in during his employment. No records were located.

Oak Ridge conducted a further search of the DOE Archives legacy files where some Chapman Valve historical declassified documents are stored. All five site offices associated with Oak Ridge were searched based on the information the Appellant provided. The site offices looked for lists of Atomic Energy Commission (AEC) employees, and for anything about medals, H.E. Dickerman, blueprints or other documents with the name Gminski. The site offices were provided copies of the Appellant's original request, with the name correctly spelled. Some sites were searched electronically and some by hand. No records were located.

As stated above, the Appellant had asked not to be referred to the National Archives and Records Administration (NARA) because she had already contacted it regarding selective service deferment ledgers for Mr. Gminski. Oak Ridge did, however, refer the Appellant to NARA not so the deferment ledgers could be searched, but because the Appellant indicated that Mr. Gminski might have been an AEC employee. The records of former federal AEC employees are stored at NARA in St. Louis. The Appellant also requested that Department of Defense records be searched. Oak Ridge did provide contact information for the DOD, so that the Appellant could make a similar request at

¹ Oak Ridge indicated that in an email sent to the Appellant, Mr. Gminski's name was misspelled, leading to the Appellant's concern. The people performing the searches used the original FOIA request to conduct the search. Electronic Mail Message from Amy Rothrock to Janet R.H. Fishman, OHA, DOE, January 19, 2006.

DOD. The FOIA only requires DOE to search its own files, not files of other agencies. The Appellant must file a separate request with DOD for information regarding Mr. Gminski. Finally, the Appellant asked why it took one year for her request to be referred to Oak Ridge. Under the FOIA, agencies are required only to release non-exempt, responsive documents; they are not required to answer questions about an agency's operations. *DiViaio v. Kelley*, 571 F.2d 538, 542-43 (10th Cir. 1978). In this instance, the DOE has no documents that contain information responsive to that question.

Based on the search that the Oak Ridge performed, we are convinced that it followed procedures which were reasonably calculated to uncover the material sought by the Appellant in her request. Accordingly, the Appeal should be denied.

It Is Therefore Ordered That:

- (1) The Appeal filed by Nancy Mae Gminski, on January 3, 2006, Case No. TFA-0139, is hereby denied.
- (2) This is a final Order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provision of 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought either in the district where the requester resides or has a principal place of business or in which the agency records are situated or in the District of Columbia.

George B. Breznay
Director
Office of Hearings and Appeals

Date: February 14, 2006